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301 NLRB No. 8

D--1679
Skowhegan, ME

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ED HARMON & SONS WELDING &
FABRICATION, INC.

and

Case 1--CA--27273

LOCAL 496, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRON WORKERS, AFL--CIO

DECISION AND ORDER

By Members Cracraft, Devaney, and Oviatt

Upon a charge filed by the Union on April 27, 1990, and an amended charge on June 1, 1990, the General Counsel of the National Labor Relations Board issued a complaint on June 29, 1990, against Ed Harmon & Sons Welding & Fabrication, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On October 22, 1990, the General Counsel filed a Motion for Summary Judgment with exhibits attached. On October 24, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion therefore are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by certified mail dated October 5, 1990, notified the Respondent that unless an answer was received by the close of business October 11, 1990, a Motion for Summary Judgment would be filed.[1] To date, the Respondent has failed to file an answer and has failed to file a response to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with an office and place of business in Skowhegan, Maine, has been engaged in the business of steel fabrication and erection. During the calendar year ending December 31, 1989, in the course and conduct of its business operations, the Respondent purchased and received at

[1] According to the motion, the return receipt for the October 5, 1990 letter served on the Respondent is not available. Presumably this document was not claimed by the Respondent, although the original letter was not returned to the Regional Office. See Michigan Expediting Service, 282 NLRB 210 fn. 6 (1986). The return receipt for the copy of the letter served on the Respondent's counsel is attached to the motion.

its Skowhegan facility products, goods, and materials valued in excess of $50,000 from other enterprises, including American Steel Co., located within the State of Maine, each of which other enterprises had received such products, goods, and materials directly from points outside the State of Maine. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of the Act.

II. Alleged Unfair Labor Practices

On about July 25, 1988, certain signatory employers and the Union entered into a collective-bargaining agreement, which by its terms was effective for the period July 26, 1988, through July 25, 1990. On various dates in 1989, including on about June 7, 1989, the Respondent entered into several ''Short Form Agreement for Single Jobsite'' agreements with the Union, including such an agreement for the Benton School jobsite in Benton, Maine, which bound the Respondent to the terms and conditions of employment of the 1988--1990 agreement.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All iron workers employed by employer signatories to the 1988-1990 Agreement and by employers who have executed Short Form Agreements for Single Jobsite, including Respondent, but excluding guards and supervisors as defined in the Act.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about November 3, 1989, the Respondent has failed and refused to pay the fringe-benefit amounts that have become due under article III of the

1988--1990 agreement as follows: welfare fund, pension fund, annuity fund, education fund, and national apprentice fund. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

We find that, by the above acts and conduct, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees, and that the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing since about November 3, 1989, to pay the contractually required fringe benefit amounts to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make its unit employees whole by making all fringe benefit contributions to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, as required by the 1988--1990 collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the payments;[2] and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make the required payments,

[2] Any additional amounts due on trust fund payments shall be computed in the manner prescribed in Merryweather Optical Co., 240 NLRB 1213 (1979).

as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Ed Harmon & Sons Welding & Fabrication, Inc., Skowhegan, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 496, International Association of Bridge, Structural and Ornamental Iron Workers, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to pay the fringe benefit amounts to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, as required by the 1988--1990 collective-bargaining agreement. The unit is:

> All iron workers employed by employer signatories to the 1988--1990 agreement and by employers who have executed Short Form Agreements for Single Jobsite, including Respondent, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by paying the fringe benefit amounts on their behalf to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, as required by the 1988--1990 collective-bargaining agreement with the Union, which have not been paid, and by reimbursing the unit employees for any expenses ensuing from the failure to

make those payments, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Skowhegan, Maine, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. Janaury 15, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 496, International Association of Bridge, Structural and Ornamental Iron Workers, AFL--CIO, as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to pay the fringe benefit amounts to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, as provided in our 1988--1990 collective-bargaining agreement with the Union. The unit is:

> All iron workers employed by employer signatories to the 1988--1990 Agreement and by employers who have executed Short Form Agreements for Single Jobsite, including Respondent, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by paying the fringe benefit amounts on their behalf to the welfare fund, pension fund, annuity fund, education fund, and national apprentice fund, as required in the collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees, with interest, for any expenses ensuing from our failure to make the required payments.

ED HARMON & SONS WELDING &
FABRICATION, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.